

IN THE IOWA DISTRICT COURT FOR MARION COUNTY

<p>BILLY DEAN CARTER, BILL G. CARTER AND ESTATE OF SHIRLEY CARTER by and through BILL G. CARTER, Executor,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>JASON CARTER,</p> <p>Defendant.</p>	<p>Law No. LACV095809</p> <p>DEFENDANT’S UNOPPOSED MOTION TO SEQUESTER WITNESSES</p>
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COMES NOW Petitioner/Defendant Jason Carter and hereby moves this Court to sequester non-party witnesses who will testify at the hearing scheduled for December 11 and 12. In support of this unopposed motion, Defendant states as follows:

1. The hearing on Defendant’s Petition to Vacate is expected to take several days.

Defendant plans on calling multiple members of law enforcement to testify.

2. Iowa R. Evid. 5.615 governs the exclusion of witnesses. Rule 5.615 provides:

At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This rule does not authorize exclusion of any of the following:

- (1) A party who is a natural person.
- (2) An officer or employee of a party which is not a natural person designated as its representative by its attorney.
- (3) A person whose presence is shown by a party to be essential to the presentation of the party’s cause.

3. “Courts have long recognized the practice of excluding witnesses as a means of preventing a witness from shaping his testimony to conform with that of earlier witnesses.” *State v. Sharkey*, 311 N.W.2d 68, 70 (Iowa 1981); *see also Gavlock v. Coleman*, 493 N.W.2d 94, 99 (Iowa 1992).

4. At common law, courts had discretion to exclude witnesses from the courtroom while other witnesses were testifying in order that the witnesses be examined separately. Such applications were rarely denied. *Hubbel v. Ream*, 31 Iowa 289, 290 (1871).

5. “The purpose of the rule is of course to lessen the danger of perjury, or at least of a suggestion to following witnesses of what their testimony should be to correspond with that previously given; to put each witness on his own knowledge of the facts to which he testifies rather than to have his memory refreshed, even guided, and his testimony colored by what has gone before.” *In re Smith’s Will*, 60 N.W.2d 866, 869 (Iowa 1953); *restated in State v. Pierce*, 287 N.W.2d 570, 574 (Iowa 1980).

6. In the instant case, the witnesses (with the exception of witnesses who are also parties to this action) should be sequestered to ensure that they testify based on their own knowledge, and not based upon what others say.

7. Sequestration will not work any hardship on the parties or any of their witnesses. Refusal to exclude witnesses, however, will prejudice Defendant in its ability to examine and cross-examine witnesses, and unfairly allow those who testify first to influence the testimony of those who follow.

8. Plaintiffs do not oppose this motion.

WHEREFORE, Petitioner/Defendant Jason Carter respectfully requests that this Court grant this motion and sequester all non-party witnesses during the hearing on December 10 and 11.

Respectfully submitted,

/s/ Alison F. Kanne

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon the parties to this action by serving a copy upon each of the attorneys listed below on December 3, 2018 by CM/ECF.

/s/ Alison F. Kanne

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